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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/444,284	11/19/1999	RONALD VOGELS	4231US	8464

7590 10/22/2002

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EXAMINER

CHEN, SHIN LIN

ART UNIT

PAPER NUMBER

1632

DATE MAILED: 10/22/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/444,284	Applicant(s) Vogels et al.
	Examiner Shin-Lin Chen	Art Unit 1632
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<p>THE REPLY FILED <u>Sep 23, 2002</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>		
<u>THE PERIOD FOR REPLY</u> [check only a) or b)]		
<p>a) <input checked="" type="checkbox"/> The period for reply expires <u>4</u> months from the mailing date of the final rejection.</p>		
<p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>		
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>		
<p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____ . Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p>		
<p>2. <input checked="" type="checkbox"/> The proposed amendment(s) will not be entered because:</p>		
<p>(a) <input checked="" type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p>		
<p>(b) <input type="checkbox"/> they raise the issue of new matter (see NOTE below);</p>		
<p>(c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p>		
<p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p>		
<p>NOTE: <u>There is no antecedent basis for the phrase "the gene delivery vehicle" in claim 21. Claim 21 depends on canceled claim 1. it is unclear what is intended to be claimed in claim 21.</u></p>		
<p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____ _____</p>		
<p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>		
<p>5. <input checked="" type="checkbox"/> The a) <input type="checkbox"/> affidavit, b) <input type="checkbox"/> exhibit, or c) <input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>Applicants' arguments, except the argument for 35 U.S.C. 112 second paragraph of claims 2, 25, 37-40 and 42, are directed to the amended claims, therefore, they are irrelevant because the amendment filed 9-23-02 has not been</u></p>		
<p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p>		
<p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a) <input checked="" type="checkbox"/> will not be entered or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p>		
<p>The status of the claim(s) is (or will be) as follows:</p>		
<p>Claim(s) allowed: <u>None</u></p>		
<p>Claim(s) objected to: <u>None</u></p>		
<p>Claim(s) rejected: <u>1, 2, 4-14, 16-21, 24-26, 28-32, and 37-58</u></p>		
<p>Claim(s) withdrawn from consideration: _____</p>		
<p>8. <input type="checkbox"/> The proposed drawing correction filed on _____ is a) <input type="checkbox"/> approved or b) <input type="checkbox"/> disapproved by the Examiner.</p>		
<p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p>		
<p>10. <input type="checkbox"/> Other: _____</p>		

Art Unit: 1633

DETAILED ACTION

Continued from Advisory Action:

entered. Applicants' argument regarding 35 U.S.C. 112 second paragraph rejection of claims 2, 25, 37-40 and 42 indicates that the data shown in Table II for liver cells are significant between control Ad5 adenovirus and recombinant adenoviruses Fib 12, Fib 16, Fib 28 and Fib 40-L (amendment, p. 6-7). This is not found persuasive because of the reasons of record. The specification still fails to specifically define the term "significantly".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shin-Lin Chen whose telephone number is (703) 305-1678. The examiner can normally be reached on Monday to Friday from 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Reynolds can be reached on (703) 305-4051. The fax phone number for this group is (703) 308-4242.

Questions of formal matters can be directed to the patent analyst, Patsy Zimmerman, whose telephone number is (703) 305-2758.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0196.

S. Chen